

BEFORE THE  
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation against: )

MARK DAVID HARDY )

1552 Eighteenth Street )

Santa Monica, CA 90404 )

Land Surveyor License No. L 5440, )

Respondent. )

Case No. 841-A

**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers and Land Surveyors as its Decision in the above-entitled matter.

This Decision shall become effective on December 24, 2010.

IT IS SO ORDERED November 17, 2010.

BOARD FOR PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS  
Department of Consumer Affairs  
State of California

By Original Signed

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 GREGORY SALUTE  
Supervising Deputy Attorney General  
3 SUSAN MELTON WILSON  
Deputy Attorney General  
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E-mail: Susan.Wilson@doj.ca.gov  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation  
12 Against:

13 **MARK DAVID HARDY**  
24007 Ventura Blvd., Suite #102  
14 Calabasas, CA 91302

15 Civil Engineer License No. C 36538  
16 Land Surveyor License No. L 5440

17 Respondent.

Case No. 841-A

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

18  
19 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
20 interest and the responsibility of the Board for Professional Engineers and Land Surveyors of the  
21 Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement  
22 and Disciplinary Order which will be submitted to the Board for approval and adoption as the  
23 final disposition of the Accusation

24 **PARTIES**

25 1. David E. Brown (Complainant) is the Executive Officer of the Board for Professional  
26 Engineers and Land Surveyors. He brought this action solely in his official capacity and is  
27 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,  
28 by Susan Melton Wilson, Deputy Attorney General.

2. Respondent Mark David Hardy (Respondent) is represented in this proceeding by attorney Derrick F. Coleman, whose address is 501 Colorado Avenue, Suite 20B, Santa Monica, CA 90401.

3. On or about July 22, 1983, the Board for Professional Engineers and Land Surveyors issued Civil Engineer License No. C 36538 to Mark David Hardy (Respondent). The Civil Engineer License was in full force and effect at all times relevant to the charges brought in Accusation No. 841-A and will expire on June 30, 2010, unless renewed.

4. On or about March 16, 1984, the Board for Professional Engineers and Land Surveyors issued Land Surveyor License No. L 5440 to Mark David Hardy (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the charges brought in Accusation No. 841-A and will expire on September 30, 2010, unless renewed.

#### JURISDICTION

5. Accusation No. 841-A was filed before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 6, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 841-A is attached as **Exhibit A** and incorporated herein by reference.

#### ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 841-A. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and

1 court review of an adverse decision; and all other rights accorded by the California  
2 Administrative Procedure Act and other applicable laws.

3 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
4 every right set forth above.

5 CULPABILITY

6 9. Nothing herein constitutes an admission by Respondent of any wrongdoing in  
7 connection with the events described in Accusation No. 841-A.

8 10. Respondent agrees to the imposition of discipline as to his Land Surveyor License  
9 No. L 5440, and he agrees to be bound by the Board's imposition of discipline as set forth in the  
10 Disciplinary Order below.

11 RESERVATION

12 11. The admissions made by Respondent herein are only for the purposes of this  
13 proceeding, or any other proceedings in which the Board for Professional Engineers and Land  
14 Surveyors or other professional licensing agency is involved, and shall not be admissible in any  
15 other criminal or civil proceeding.

16 CONTINGENCY

17 12. This stipulation shall be subject to approval by the Board for Professional Engineers  
18 and Land Surveyors. Respondent understands and agrees that counsel for Complainant and the  
19 staff of the Board for Professional Engineers and Land Surveyors may communicate directly  
20 with the Board regarding this stipulation and settlement, without notice to or participation by  
21 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he  
22 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board  
23 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,  
24 the Stipulated Settlement and Disciplinary Order shall be of no force or effect, and shall not be  
25 admissible in any criminal, civil, administrative or other legal proceeding, and the Board shall not  
26 be disqualified from further action by having considered this matter.

27 ///

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13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

## DISCIPLINARY ORDER

A PUBLIC REPROVAL shall be issued to Respondent Mark David Hardy, Land Surveyor License, No. L 5440. It is further ordered that Respondent Hardy shall complete the following requirements:

A. Within eighteen (18) months from the effective date of the decision, Respondent shall fully reimburse the Board for its investigative and enforcement costs in the amount of Two Thousand, Five Hundred Dollars (\$2,500).

B. Within eighteen (18) months from the effective date of the decision, Respondent shall successfully complete sixteen (16) hours of continuing education/professional development in the field of land surveying, related to the areas of violation alleged in the Accusation, approved in advance by the Board or its designee. Respondent shall provide the Board with verifiable proof of his successful completion of said hours in a timely manner.

C. Within eighteen (18) months from the effective date of the decision, Respondent shall successfully complete and pass a course in professionalism and ethics for engineers

1 approved in advance by the Board or its designee. Respondent shall provide the Board with  
2 verifiable proof of his successful completion of said course in a timely manner.

3 D. In the event that Respondent fails to comply *any* of the above requirements A, B  
4 or C as set forth in this Order, within the time specified in the Order, the Board shall deem  
5 Respondent's Notice of Defense to Accusation No. 841-A to be withdrawn, and Accusation  
6 No. 841-A shall be deemed unchallenged by Respondent, and all charges and allegations  
7 contained therein shall be deemed admitted as accurate and true, and the Board shall, without  
8 further process, enter its Default Decision against Respondent in the matter of Accusation  
9 No. 841-A, revoking Respondent's Land Surveyor License No. L 5440.  
10

11 ACCEPTANCE

12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
13 discussed it with my attorney, Derrick F. Coleman. I understand the stipulation and the effect it  
14 will have on my Land Surveyor License. I enter into this Stipulated Settlement and Disciplinary  
15 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
16 of the Board for Professional Engineers and Land Surveyors.  
17  
18

19 DATED: \_\_\_\_\_

\_\_\_\_\_  
MARK DAVID HARDY  
Respondent

21 I have read and fully discussed with my client, Respondent Mark David Hardy, the terms  
22 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
23 Order. I approve its form and content.  
24

25 DATED: \_\_\_\_\_

\_\_\_\_\_  
DERRICK F. COLEMAN  
Attorney for Respondent

1 approved in advance by the Board or its designee. Respondent shall provide the Board with  
2 verifiable proof of his successful completion of said course in a timely manner.

3 D. In the event that Respondent fails to comply *any* of the above requirements A, B  
4 or C as set forth in this Order, within the time specified in the Order, the Board shall deem  
5 Respondent's Notice of Defense to Accusation No. 841-A to be withdrawn, and Accusation  
6 No. 841-A shall be deemed unchallenged by Respondent, and all charges and allegations  
7 contained therein shall be deemed admitted as accurate and true, and the Board shall, without  
8 further process, enter its Default Decision against Respondent in the matter of Accusation  
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12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
13 discussed it with my attorney, Derrick F. Coleman. I understand the stipulation and the effect it  
14 will have on my Land Surveyor License. I enter into this Stipulated Settlement and Disciplinary  
15 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
16 of the Board for Professional Engineers and Land Surveyors.  
17

18  
19 DATED: 29th Oct 2010 Original Signed  
20 MARK DAVID HARDY  
Respondent

21 I have read and fully discussed with my client, Respondent Mark David Hardy, the terms  
22 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
23 Order. I approve its form and content.

24  
25 DATED: 10/29/10 Original Signed  
26 DERRICK F. COLEMAN  
Attorney for Respondent  
27  
28

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board for Professional Engineers and Land Surveyors of the Department of Consumer Affairs.

Dated: November 1, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
GREGORY SALUTE  
Supervising Deputy Attorney General

*Original Signed*  
SUSAN MELTON WILSON  
Deputy Attorney General  
*Attorneys for Complainant*

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50699377.(revised 7/21)



1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 GREGORY J. SALUTE  
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6  
7 Attorneys for Complainant

8 **BEFORE THE**  
9 **BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 841-A

12 **MARK DAVID HARDY**  
24007 Ventura Boulevard, Suite 102  
13 Calabasas, CA 91302

**A C C U S A T I O N**

14 Civil Engineer License No. C 36538  
Land Surveyor License No. L 5440,

15  
16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. David E. Brown (Complainant) brings this Accusation solely in his  
21 official capacity as the Executive Officer of the Board for Professional Engineers and Land  
22 Surveyors, Department of Consumer Affairs (Board).

23 2. On or about March 16, 1984, the Board issued Land Surveyor License No.  
24 L 5440 to Mark David Hardy (Respondent). The License was in full force and effect at all times  
25 relevant to the charges brought herein and will expire on September 30, 2010, unless renewed.

26 3. On or about July 22, 1983, the Board issued Civil Engineer License No.  
27 C36538 to Mark David Hardy (Respondent). The License was in full force and effect at all  
28 times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

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5. Section 8780 states:

“By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

(b) Any negligence or incompetence in his or her practice of land surveying.

• • • •

“(a) Except as provided in subdivision (b), after making a field survey in

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the rules of land surveying, the licensed land surveyor or licensed civil engineer shall file a record of the survey with the county recorder in the county in which the field survey was made a record of the survey. The record of the survey shall include a description of the land boundaries or property lines, if the filed survey discloses any of the

1 (1) Material evidence or physical change, which in whole or in part does not  
2 appear on any subdivision map, official map, or record of survey previously recorded or property  
3 filed in the office of the county recorder or county surveying department, or map or survey  
4 record maintained by the Bureau of Land Management of the United States.

5 (2) A material discrepancy with the information contained in any subdivision  
6 map, official map, or record of survey previously recorded or filed in the office of the county  
7 recorder or the county surveying department, or any map or survey record maintained by the  
8 Bureau of Land Management of the United States. For purposes of this subdivision, a “material  
9 discrepancy” is limited to a material discrepancy in the position of points or lines, or in  
10 dimensions.

11 (3) Evidence that, by reasonable analysis, might result in materially alternate  
12 positions of lines or points, shown on any subdivision map, official map, or record of survey  
13 previously recorded or filed in the office of the county recorder or the county surveying  
14 department, or any map of survey record maintained by the Bureau of Land Management of the  
15 United States.

16 (4) The establishment of one or more points or lines not shown on any  
17 subdivision map, official map, or record of survey, the positions of which are not ascertained  
18 from an inspection of the subdivision map, official map, or record of survey.

19 (5) The points or lines set during the performance of a field survey of any parcel  
20 described in any deed or other instrument of title recorded in the county recorder’s office are not  
21 shown on any subdivision map, official map, or recorded of survey.

22 (c) The record of survey required to be filed pursuant to this section shall be filed  
23 within 90 days after the setting of boundary monuments during the performance of a field survey  
24 or within 90 days after completion of a field survey, whichever occurs first.

25 (d)(1) If the 90-day time limit contained in subdivision (c) cannot be complied  
26 with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the  
27 90-day time period shall be extended until the time at which the reasons for delay are eliminated.  
28 If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit,

1 he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with  
2 a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date  
3 for completion of the record of survey, the reasons for the delay, and a general statement as to  
4 the location of the survey, including the assessors's parcel number or numbers.

5 (2) The licensed land surveyor or licensed civil engineer shall not initially be  
6 required to provide specific details of the survey. However, if other surveys at the same location  
7 are performed by others which may affect or be affected by the survey, the licensed land  
8 surveyor or licensed civil engineer shall then provide information requested by the county  
9 surveyor without unreasonable delay.

10 (e) Any record of survey filed with the county surveyor shall, after being  
11 examined by him or her, be filed with the county recorder.

12 (f) If the preparer of the record of survey provides a postage-paid, self-addressed  
13 envelope or postcard with the filing of the record of survey, the county recorder shall return the  
14 postage-paid, self-addressed envelope or post-card to the preparer of the record of survey with  
15 the filing data within 10 days.

16 7. California Code of Regulations, title 16, section 404, states, in pertinent  
17 part:

18 "For the purpose of the rules and regulations contained in this chapter, the  
19 following terms are defined. No definition contained herein authorizes the practice of  
20 professional engineering as defined in the Professional Engineers Act.

21 . . . .

22 "(n) For the sole purpose of investigating complaints and making findings thereon  
23 under Sections 6775 and 8780 of the Code, "incompetence" as used in Sections 6775 and 8780  
24 of the Code is defined as the lack of knowledge or ability in discharging professional obligations  
25 as a professional engineer or land surveyor.

26 . . . .

27 "(w) For the sole purpose of investigating complaints and making findings  
28 thereon under Sections 6775 and 8780 of the Code, "negligence" as used in Sections 6775 and

1 8780 of the Code is defined as the failure of a licensee, in the practice of professional  
2 engineering or land surveying, to use the care ordinarily exercised in like cases by duly licensed  
3 professional engineers and land surveyors in good standing. . . .”

4 8. Section 118, subdivision (b), provides that the suspension / expiration /  
5 surrender / cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
6 disciplinary action during the period within which the license may be renewed, restored, reissued  
7 or reinstated.

8 9. Section 125.3 provides, in pertinent part, that the board may request the  
9 administrative law judge to direct a licensee found to have committed a violation or violations  
10 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
11 enforcement of the case.

#### 12 FIRST CAUSE FOR DISCIPLINE

13 (Fraud, Deceit, or Misrepresentation in Practice of Land Surveying.)

14 10. Respondent is subject to disciplinary action under section 8780,  
15 subdivision (a), for unprofessional conduct, in that Respondent engaged in fraud, deceit, or  
16 misrepresentation in his practice of land surveying services for his own property and that of his  
17 neighbors Mr. and/or Mrs. L (“Neighbor”) on San Vicente Boulevard in Santa Monica, CA on or  
18 about December 2002 through July 2005, as follows:

19 a. In and prior to November, 2002, Respondent and Neighbor resided in  
20 single family homes on adjoining lots on San Vicente Boulevard in the city of Santa Monica.  
21 Both homes had garages at the rear of the property. The lots were divided by a cinder block wall,  
22 which had been built along the common lot line.

23 b. On or about December 2002, without warning to Neighbor, Respondent  
24 demolished and removed the existing cinder block wall along the common lot line, and began  
25 construction of a new wall abutting Neighbor’s garage.

26 c. Neighbor objected to Respondent’s plan to build a new wall which  
27 appeared to encroach upon Neighbor’s property.

28 d. At that time Respondent represented to Neighbor that he was a surveyor

1 and had performed a survey to establish the property line, and that the new wall conformed to his  
2 survey results.

3 e. Neighbor then hired an independent surveyor to establish the property  
4 line. Using a monument on the centerline of the alley directly behind Respondent's property, the  
5 independent surveyor located an alternate position of the property line, which placed Neighbor's  
6 garage two (2) feet southwesterly and clear of the lot line.

7 f. In Fall of 2003, Respondent admitted to Board investigators that there had  
8 been errors in his work. In July of 2005, Respondent admitted his methodology in surveying "my  
9 property line" was as follows: *"I could not find a monument at the end of my alley so I turned  
10 record angle up the alley from Seventh Street and set temporary points on my property. I always  
11 set temporary points until office verified or in boundary line disputes talking with other  
12 surveyor. When (the independent surveyor) surveyed the property line in question he found a  
13 monument of record at the end of the alley, which established the centerline of the alley more  
14 accurately than I had."*

15 g. Respondent admitted that he did not file a corner record, but explained  
16 that after realizing from the independent surveyor's work that "my points were off," he decided  
17 to  
18 "just remov(e) the points" and filed no corner record.

19 h. Respondent engaged in fraud, deceit, or misrepresentation in his  
20 practice in that Respondent falsely claimed to the Board that his property line monuments were  
21 temporary in nature. In fact, Respondent set points that were intended to locate the property and  
22 marked corners with durable tagged monuments that comply with standard industry practice.

## 23 SECOND CAUSE FOR DISCIPLINE

### 24 (Negligence and Incompetence)

25 11. Respondent is subject to disciplinary action under section 8780,  
26 subdivision (b), for unprofessional conduct, in that Respondent was negligent and incompetent in  
27 the course and scope of land surveying and fell below the standard of practice when dealing  
28 with a survey within sectionalized land, as follows:



2. Revoking or suspending Civil Engineer License No. C36538, issued to Mark David Hardy.

3. Ordering Mark David Hardy to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4 Taking such other and further action as deemed necessary and proper.

DATED:

4 T  
9/25/09

Original Signed

DAVID E. BROWN

Executive Officer

Board for Professional Engineers and Land Surveyors

Department of Consumer Affairs

State of California

Complainant

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